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NO. 283

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

A MOTION THAT THE COURT RECEIVE INFORMATION CONCERNING THE UNTIMELINESS OF THE PETITION

DONALD F. KNOX
Petitioner

vs.

THE STATE OF OHIO
Respondent

Donald F. Knox
127 W. Northwood Ave.
Columbus, Ohio

Petitioner

MOTION

The petitioner respectfully requests that the Court receive the information stated below in the affidavit and on that basis consider the Petition for Writ of Certiorari timely for the purposes of further consideration of same. The petitioner bases this request upon the fact that the untimeliness of the petition arose out of circumstances completely beyond the control of the petitioner.

Respectfully submitted,

Donald F. Knox
Petitioner

AFFIDAVIT

Now comes Donald F. Knox, the affiant herein and first being duly sworn and cautioned according to law states the following:

1. That on Thursday, June 8, 1967, just two days prior to the deadline for filing the petition, which was on Saturday June 10, the affiant packed a box within his home and included 40 copies of both the Petition and the Appendixes plus the official record. Affiant believes that he also placed a large envelope on top of all the other material and addressed it to the Court: it included an affidavit as proof of service, a check for $100.00 and a covering letter listing all materials in the box. Also on the same day, the affiant had an affidavit notarized as proof of service.

2. That it was impossible to have mailed the materials earlier. The local post office stated that by mailing air-mail late in the afternoon of June 8, it would arrive in Washington, D. C. during the late hours of the same day. The box was insured for the maximum amount of $200.00 but not registered. This action was completed by 4:15 p. m. of June 8, 1967.

3. That on Saturday, June 16, over a week after mailing the box, he received a letter from the Office of the Clerk informing him that the check and proof of service had not been received. He immediately wrote and informed the Office of the Clerk that he believed he had placed the missing items in a large envelope on the very top of the other items within the box and asked that a check be made to determine if said envelope might be located. Affiant believed that such action was logical and proper in view of the fact that the missing envelope had not been found in his home.

4. That on Monday, June 19, he phoned the bank and stopped payment on the check for $100.00 (which has to this date not arrived at the bank).

5. That on June 21, 1967 he received a telegram from the Office of the Clerk stating that the docket fee and proof of service had not been received. Affiant then prepared a new check and affidavit as proof of service and mailed them two hours after receipt of said telegram.

6. That on about June 25, 1967 he received from the Office of the Clerk a letter dated June 23, stating that the replacement items were received and that the case was docketed on June 23, 1967.

7. That on July 10, 1967 he first learned that the Petition was considered untimely as a result of a conversation with an Assistant in the Office of the Attorney General of Ohio who had written to the Office of the Clerk about the matter.

8. That the act of writing to the Office of the Clerk on June 17, 1967 asking that that Office check to see if the missing envelope might be located was in no way intended to avoid the rules of the Court or cause inconvenience to the Office of the Clerk.

9. That a letter from the notary stating that an affidavit as proof of service was notarized on June 8, 1967 and a letter from the bank stating that affiant stopped payment as of June 19, 1967 were mailed to Mr. Rodak of the Office of the Clerk on September 5, 1967. Said items are presented in order to demonstrate that affiant did prepare proof of service and a check for $100.00 with full intention of including same in the box sent to the Court on June 8, 1967. Said missing items have not been located as of this date.

Thus concludes the affiant.

Donald F. Knox
Affiant

See next page for notarization.

Sworn to before me and in my presence this _____ day of September, 1967

M. B. Fox
Notary Public

My commission expires March 20, 1972.